ed by the courts, and for the foregoing reasons, I dismissed the applicant's said notice of originating motion with costs so that the caveat entered against the said lands remain extended until disposal of the said K.L. High Court civil suits.

Application dismissed.

Solicitors: *Ng Ek Teong; Stephen Goh & Partners.*

NG CHUI SIA v. MAIMON BT. ALI

[A.C.J. (Hashim Yeop A. Sani J.) May 5, 1982]
[Kuala Lumpur – Civil Appeal No. 99 of 1981]

Road Traffic – Negligence – Road accident – Onus on injured person to prove negligence – Misdirection on law by magistrate.

This was an appeal against a finding of 100% liability made by the learned magistrate in an accident case where both the rider of a motorcycle and the pillion rider were killed. The plaintiff was the administrator of the estate of the deceased pillion rider and the appellant was the driver of the motor car involved in the accident.

Held, allowing the appeal: (1) the grounds of judgment of the learned magistrate were, with respect, in most parts incomprehensible. There was an apparent confusion of law and insufficient appreciation of the facts. There were many instances in the grounds of judgment which showed that the magistrate had misdirected himself on the law and applied the wrong test and that he imposed on the defendant the onus of proving that he was not negligent;

(2) when an accidental harm is done, it is not for the doer to excuse himself by proving that the accident was inevitable and that there was no negligence on his part. It is for the person who suffers the harm to prove affirmatively that the accidental harm was due to the negligence of the other person;

(3) applying the law to the facts of the case, the magistrate's finding that the appellant was 100% liable against the deceased pillion rider could not be sustained.

MAGISTRATE'S APPEAL.

Joga Singh for the appellant.
Mahindar Singh for the respondent.

Cur. Adv. Vult.

Hashim Yeop A. Sani J.: This was an appeal against a finding of 100% liability made by the learned Magistrate in an accident case where apparently both the rider of a motor cycle and the pillion rider were killed. The plaintiff before the Magistrate was the administrator of the estate of the deceased pillion rider. The appellant was the driver of the motor car involved in the accident.

At the trial before the Magistrate the plaintiff brought two witnesses neither of whom saw the collision. PW2 was riding another motor cycle behind the deceased along Jalan Banting when he saw his friend (the deceased) "fall at Simpang Morib". PW2 stopped his motor cycle and found that his friend had died. He then lodged a Police Report No. 979/75 Telok Datok. In the report PW2 stated that he was then travelling behind the deceased at a distance of about one mile.

The appellant was the sole witness for the defence. According to his evidence he was on the correct side of the road when he saw two persons fall from a motor cycle and they were thrown towards his car. According to him the motor cycle knocked his car and he lodged a Police Report No. 982/75. In his report he stated that as he arrived at the 24th milestone Jalan Banting/Sepang, one motor cycle coming from the direction of Jalan Morib suddenly skidded and was thrown towards his car.

In the statement of defence paragraph 3. thereof stated that the motor cycle concerned skidded and both the rider and the pillion rider "flew towards" the motor car. In the statement of agreed facts paragraph 3 thereof stated that a collision occurred on the day in question between the deceased riding pillion on the motor cycle and the motor car driven by the defendant.

It seems quite obvious that on the pleadings as well as the evidence all that was established was that there was an accident and a collision occurred between the deceased and the defendant's motor car.

The grounds of judgment of the learned Magistrate are with respect in most parts incomprehensible. There is an apparent confusion of the law and insufficient appreciation of the facts. There are many instances in the grounds of judgment which show that the Magistrate misdirected himself on the law and applied the wrong tests and that he imposed on the defendant the onus of proving that he was not negligent.

In an action for negligence the onus of proving the allegation of negligence rests on the person who makes it unless there are disclosed facts which raise a presumption in favour of the plaintiff. The plaintiff must show affirmatively that there has

been a breach of a specific or general duty by the defendant and this resulted in the damage to the plaintiff. If he fails to prove this the action must fail.

It was contended by counsel for the respondent that the appellant should have pleaded inevitable accident if he maintained that the motor cycle skidded and knocked into his car. But the law on this is clear. When an accidental harm is done it is not for the doer to excuse himself by proving that the accident was inevitable and that there was no negligence on his part. It is for the person who suffers the harm to prove affirmatively that the accidental harm was due to the negligence of the other person.

Applying the law to the facts of this case, the Magistrate's finding that the appellant was 100% liable against the deceased pillion rider cannot be sustained.

The appeal was accordingly allowed. Costs to respondent.

Appeal allowed.

Solicitors: *Richard Talalla; R.K. Nathan & Co.*

PUBLIC PROSECUTOR v. MARK KODING

[O.Cr.J. (Mohamed Azmi J.) May 28, 1982]
[Kuala Lumpur – Federal Territory Criminal Trial No. 11 of 1981]

Criminal Law and Procedure – Sedition – Speech by Member of Parliament in Dewan Rakyat – Questioning policy of Government in allowing Chinese and Tamil schools to continue in Malaysia – Questioning use of Chinese and Tamil on road signboards – Advocating closure of Chinese and Tamil schools and complete restriction of use of these languages on signboards – Suggesting amendment of article 152 of Federal Constitution – Whether seditious – Sedition Act 1948, ss. 2, 3, 4(1)(b) – Federal Constitution, arts. 63 and 152.

Administrative Law – Sedition – Member of Parliament charged for sedition – Whether speech contravened Federal Constitution, art. 152(a).

Interpretation – "teaching or learning any other language" distinguished from "teaching or learning in any other language".

In this case the accused, a Member of Parliament, was charged for uttering seditious words in the course of his speech in the Dewan Rakyat an offence under the Sedition Act, 1948. In his speech the accused questioned the policy of Government in allowing Chinese and Tamil schools to continue in this country. Secondly he questioned the use of Chinese and Tamil on road signboards. He advocated the closure of Chinese and Tamil schools and the complete restriction of the use of the two languages on the signboards. Thirdly he suggested that if such closure and restriction contravened Article 152 of the Federal Constitution, then the Constitution should be amended in the interest of the people and the nation. At the end of the prosecution case the learned trial judge held that the prosecution had established a *prima facie* case and called on the accused to enter on his defence. The accused elected to remain silent and did not wish to call any witness. At this stage the learned trial judge allowed certain questions of law to be referred to the Federal Court – see [1982] 2 M.L.J. 120. The Federal Court ruled in effect that the amendments limiting a Member of Parliament's right of free speech in Parliament are valid.

Held: (1) the accused was not guilty of sedition when he advocated the closure of Tamil or Chinese schools. There is, however, nothing unlawful in allowing Chinese or Tamil schools to continue;

(2) the words used by the accused in relation to road signboards could not be said to have a seditious tendency since he did not in fact call in question the existence of any right protected under any part of Article 152 of the Federal Constitution. The accused was in fact demanding for the implementation of the national language as provided for in that Article, since road signboards were erected under the Road Traffic Ordinance for an official purpose;

(3) the accused committed a breach of paragraph (b) of section 3(1) of the Sedition Act, 1948, by demanding an amendment to the Constitution and the repeal or amendment of Article 152 of the Constitution;

(4) in the circumstances the public interest would be sufficiently served if the accused is put on a bond for two years in the sum of $2,000 to be of good behaviour.

Cases referred to:

(1) *Public Prosecutor* v. *Ooi Kee Saik & Ors.* [1971] 2 M.L.J. 108, 111.
(2) *Melan bin Abdullah & Anor.* v. *Public Prosecutor* [1971] 2 M.L.J. 280, 282.
(3) *Merdeka University Bhd.* v. *Government of Malaysia* [1981] 2 M.L.J. 356.

[The following cases were also referred to in argument: *Queen Empress* v. *Balgangadhar Tilak and Keshav Mahadev* I.L.R. (1897) Vol. XXII Bombay 112; *Public Prosecutor* v. *Oh Keng Seng* [1977] 2 M.L.J. 206; *Maniben Liladhar Kara* v. *Emperor* A.I.R. 1933 Bombay 65; *Fan Yew Teng* v. *Public Prosecutor* [1971] 2 M.L.J. 271; *Haw Tua Tau* v. *Public Prosecutor* [1981] 3 W.L.R. 395; [1981] 2 M.L.J. 49; *Loh Kooi Choon* v. *Government of Malaysia* [1977] 2 M.L.J. 187; *Phang Chin Hock* v. *Public Prosecutor* [1980] 1 M.L.J. 70; *Kesavananda* v. *Kerala* [1973] S.C.R. Supp. 1; *East Union (Malaya) Sdn. Bhd.* v. *Government of State of Johore & Anor.* [1980] 2 M.L.J. 143; *Anand Reddi* v. *St. of Andhra Pradesh* A.I.R. 1959 Andhra Pradesh 144; *B. Surinder Singh Kanda* v. *The Government of the Federation of Malaya* [1962] M.L.J. 169.]

CRIMINAL TRIAL.

Mohamed Shafee bin Abdullah (Deputy Public